IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF COLORADO
MAGISTRATE JUDGE BOYD N. BOLAND

Civil Action No. 00-D-1020

UNITED STATES OF AMERICA,

Plaintiff,

v.

CHARLES S. ANDERSON, JO ELLEN ANDERSON, AND CHARLES S. ANDERSON, LLC,

Defendants.

RECOMMENDATION OF UNITED STATES MAGISTRATE JUDGE

This matter is before me on the defendants' **Motion for Dismissal** (the "Motion"), filed September 25, 2000. Because the Motion is meritless, I respectfully RECOMMEND that it be DENIED.

The government brought this action to reduce to judgment assessments of federal income taxes, penalties, interest, and other statutory additions against the defendants for unpaid taxes in 1987 and 1989 and to foreclose federal tax liens asserted against property of the defendants. The complaint alleges tax liabilities of more than $83,500.00, and is brought against three defendants--Charles S. Anderson individually; Jo Ellen Anderson individually; and Charles S. Anderson, LLC.

In support of the Motion, the defendants argue that "there is no Statute or Legislative Regulation that requires the Defendants to pay an income tax;" that "[a]t the time of filing 1987

and 1989 return forms 1040, the Defendants were no aware that the federal income tax was based upon a voluntary system of self assessment;" and that "no section of the Internal Revenue Code provides that income taxes 'have to be paid on the basis of a return.'" Motion, at ¶¶1-3. The defendants also argue that they had no income in 1987 and 1989. Id. at ¶¶4-5.

Initially, I note that a corporation, including a limited liability corporation, must be represented by a lawyer who is a member of the bar of this court. Wallic v. Owens-Corning Fiberglass Corp., 40 F. Supp. 2d 1185, 1188 (D. Colo. 1999)("[A] corporate defendant . . . and a limited liability organization . . . [can] only appear by counsel admitted to the bar of this court"). See Flora Const. Co. v. Fireman's Fund Ins. Co., 307 F.2d 413, 413-14 (10th Cir. 1962)("The rule is well established that a corporation can appear in a court of record only by an attorney at law"), cert denied, 371 U.S. 950 (1963); Reeves v. Queen City Transportation, Inc., 10 F. Supp. 2d 1181, 1188)(D. Colo. 1998)("It has been the law, for the better part of two centuries, that a corporation may appear in federal court only through a licensed attorney"). Charles S. Anderson, LLC, cannot proceed pro se, nor may Charles and Jo Ellen Anderson, who are not lawyers, represent it. According, I recommend that the Motion be denied insofar as it purports to be brought on behalf of Charles S. Anderson, LLC.

Although the defendants state in argument that they had no income in 1987 and 1989, the complaint alleges assessed taxes for those years of $18,070.00 and $21,424.00 respectively. Complaint, at ¶5. Construing the complaint in the light most favorable to the nonmoving party, as I am required to do when considering a motion to dismiss, City of Los Angeles v. Preferred Communications, Inc., 476 U.S. 488, 493 (1986); Mitchell v. King, 537 F.2d 385, 386 (10th Cir. 1976), leads to the inescapable conclusion that there are disputed issues of fact which preclude

dismissal of the government's complaint.

The defendants' argument that the Internal Revenue Code does not require the payment of income tax has been considered and rejected previously by the Tenth Circuit Court of Appeals. Specifically, in Lonsdale v. United States, 919 F.2d 1440, 1448 (10th Cir. 1990), the court stated unequivocally:

> As the cited cases, as well as many others, have made abundantly clear, the following arguments alluded to by the Lonsdales are completely lacking in legal merit and patently frivolous: . . . (5) wages are not income; (6) the income tax is voluntary; (7) no statutory authority exists for imposing an income tax on individuals. . . .

The defendants argument that there is no provision in law which requires the payment of income tax is obviously wrong. Section 1 of the Internal Revenue Code, 46 U.S.C., imposes that obligation through with the following words:

> There is hereby imposed on the taxable income of . . . every [married individual who makes a single return jointly with his spouse, 26 U.S.C. §1(a)(1); head of household, 26 U.S.C. §1(b); individual who is not a married individual, 26 U.S.C. §1(c); married individual who does not make a single return jointly with his spouse, 26 U.S.C. §1(d); etc.] a tax determined in accordance with the following table. . . .

The defendants' argument was rejected long ago in Charczuk v. Comm. of Internal Revenue, 771 F.2d 471, 473 (10th Cir. 1985), where the court stated:

> The appellant contends that "[n]owhere in any of the Statutes of the United States is there any section of law making any individual liable to pay a tax or excise on 'taxable income'" ... The essence of the appellant's argument is that 26 U.S.C. §1 does not impose tax on any individual for any stated period of time; rather, it imposes a tax on an undefined : "taxable income". Section 1 of the Internal Revenue Code . . . provides *in plain, clear and precise language* that "[t]here is hereby imposed on the taxable income of every individual . . . a tax determined in accordance with" tables

> set-out later in the statute. In equally *clear language*, Section 63 of the Code defines taxable income as "gross income, minus the deductions allowed by this chapter . . .", gross income, in turn, is defined in Section 61 of the Code as "all income from whatever source derived, including (but not limited to) . . .:
> (1) Compensation for services . . .". Despite the *appellant's attempted contorted construction of the statutory scheme*, we find that it coherently and forthrightly imposes upon the appellant a tax upon his income. . . .

(Original emphasis.)

For these reasons, I conclude that the Motion is meritless. Accordingly, I respectfully RECOMMEND that it be DENIED.

FURTHER, IT IS ORDERED that pursuant to 28 U.S.C. §636(b)(1)(C) and Fed. R. Civ. P. 72(b), the parties have ten (10) days after service of this recommendation to serve and file written, specific objections with the district judge assigned to the case. The district judge need not consider frivolous, conclusory, or general objections. A party's failure to file and serve such written, specific objections will preclude the party from a *de novo* determination by the district judge, United States v. Raddatz, 447 U.S. 667, 676-83 (1980), and also will preclude appellate review of both factual and legal questions. Talley v. Hesse, 91 F.3d 1411, 1412-13 (10th Cir. 1996).

DATED June 7, 2001.

BY THE COURT:

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United States Magistrate Judge